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IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

DATED THIS THE 26TH DAY OF MAY, 1998.

BEFORE

THE HON'BLE MR. JUSTICE T.S. THAKUR.

WRIT PETITION NO. 7189 OF 1998.

Between:

T.P. Dharmendra kumar M.A.M.Phil,
s/o. Puttamada shetty,
30 years,
r/o. No. 30, Royappa Garden,
2nd block,
Tyagaraj nagar,
Bangalore. .... Petitioner.

(Sri. S.Vasantha kumar).

And:

The State of Karnataka,
by its Secretary,
Education Dept.,
Multistoreyed buildings,
Vidhana veedhi,
Bangalore.

2. Chief Co-ordinator and
Director of Collegiate Education,
State Level Education Test
Committee, Govt. of Karnataka,
Seshadri road,
Bangalore. .... Respondents.

(Sri.N.K.Ramesh Addl.G.A).

This writ petition is filed under Article 226 of the Constitution of India praying to declare the prescription of time limit of 31.12.93 under Annexure-E and for exemption from appearing NET examination for 1997 and for ensuing years asarbitrary, discriminatory and unenforceable as against petitioner etc.,

This writ petition coming on for Prl. hearing in 'B' group this day, the court made the following -

O R D E R

The petitioner holds a masters degree in Economics. In addition, he has a M.Phil qualification in second class. His grievance inthis writ petition is against the instructions issued by the State Government to candidates appearing for the National Education Test (hereinafter referred to as NET for short) in so far as the same exempt only such candidates from appearance in the Test as have passed their M. Phil examination by the 31st of December, 1993.

2. The State Government have on the basis of the UGC norms introduced a National level eligibility test for the purpose of recruitment against the posts of Lecturers, Librarians and Physical Education Instructors in the State of Karnataka. The impugned condition contained in the instructions issued by the Government to candidates taking

the said test for the year 1997 reads thus -

> "Candidates who have submitted Ph.D thesis or passed the M. Phil examination by 31st December, 1993 are exempted from the eligibility test for Lecturers conducted by UGC, CSIR or similar test accredited by the UGC."

The petitioner's case is entirely based on the plea that, the condition afore mentioned is contrary to the statutory Rules governing recruitment against the posts referred to earlier. It was urged by Mr. Vasant Kumar, learned Counsel for the petitioner that Karnataka Education Department Services (Collegiate Education Department) (Special Recruitment) (Amendment) Rules 1993 exempted all such candidates as possess a Ph.D/M. Phil qualification from appearing the NET examination. In support he relied upon Rule 3 sub-clause (ii) as amended by the Karnataka Education Department Services (Collegiate Education Department) (Special Recruitment) Rules 1993 whereby clause (ii) to Rule 3 was added which reads thus -

3. Qualification and age :- No person shall be eligible for recruitment under these rules unless he has -

(a)(i) xx xx xx xx

(ii) "been declared successful in the National Education Test", provided further, that candidates possessing P.hd/M.Phil are exempted from appearing for NET."

The contention therefore was that since the statutory Rules framed for Recruitment to the posts in question exempted all such candidates as possess a M.Phil degree from the requirement of qualifying the NET Examination, any instructions issued by the State Government which have the effect of restricting or otherwise nullifying any such exemption were ultra vires of the said Rules and hence unenforceable. Reliance in support was placed upon a Single Bench decision of this Court in M.G.RAJU & ANOTHER .v. STATE OF KARNATAKA W.P.No.20177 and 20178/1996 dated the 20th of August, 1996 where BHAKTHAVATSALAM J., while

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considering a similar question held that - the instructions issued by the State Government in so far as the same were contrary to the Rules were unenforceble. It was contended by Mr. Vasant kumar that in the light of the said decision the instructions issued by the State Government for candidates appearing the NET examination for the year 1997 to the extent the same were contrary to the Statutory Rules mentioned above were liable to be struck down and declared unenforceble.

Mr. Ramesh, learned Govt. Advocate on the other hand, contended that reliance upon the special recruitment as amended by the Amendment Rules of 1993 introducing the exemption from the NET examination had no application to the petitioner or vacancies other than those for which the said Rules had been framed. It was argued that the Special Recruitment Rules, 1993 were introduced with a view to/~~xxxxxxxx~~ prescribing the method of recruitment for vacancies in the cadre of Lecturers in the Collegiate Education Department that existed on the date of

commencement of the said Rules. The said Rules did not according to Mr. Ramesh have any application to vacancies that occurred at any time after their promulgation so that any exemption contained in Rule. 3 (ii) of the said Rules would not benefit any person desiring to apply for appointment, against any future vacancy. He urged that the petitioner had no cause of action to file the present writ petition as the process of recruitment against the vacancies if any in any aided or Government College against anyone of the posts mentioned earlier had not been initiated. He contended that passing the National education test was an essential requirement introduced by the UGC which had been uniformly enforced ever since the UGC grades were granted to the lecturers working in the collegiate education department.

3. I have given my anxious consideration to the submissions made at the Bar. Rule 1 of the Special Recruitment Rules relied upon by Mr. Vasant kumar

is for our purpose relevant and may therefore be extracted in extenso:

Title, commencement and application -

1. These rules may be called the Karnataka Education Department Service (Collegiate Education Department) (Special Recruitment) Rules, 1993

2. They shall come into force on the date of their publication in the official Gazette.

3. Not-with-standing anything contained in the Karnataka Education Department, Services (Collegiate Education Department) (Recruitment) Rules 1964, the provisions of these Rules shall apply to vacancies of the posts of Lecturers in the Collegiate Education Department, existing as on the date of commencement of these Rules and to be filled by direct recruitment." (Emphasis supplied).

4. A plain reading of the above would show that the Special Recruitment Rules were introduced by way of an exception to what is otherwise provided for by the Karnataka Education Department Services

(Collegiate Education Department) (Recruitment) Rules, 1964. It is further evident from sub-rule (3) of Rule 1 above, that the provisions of the Special Recruitment Rules were to apply only to such vacancies in the cadre of Lecturers in the Collegiate Education Department as existed on the date of commencement of the said Rules. The Special Recruitment Rules as the very name suggests did not have the effect of supplanting the 1964 Rules for all times to come. On the contrary they were promulgated with a view to provide for recruitment against vacancies that were identifiable upto the date of their promulgation viz., 23rd of June, 1993. That being so, reliance placed by Mr.Vasant Kumar upon the provisions of the said Rules as if the same were applicable to all vacancies regard less of the dates on which they occured must be repelled. The decision of this court in WP No. 20177-78/96 referred to by Mr.Vasant kumar must also therefore be understood in the above context viz., that in regard to vacancies that were available in the cadre of Lecturers

on the date of promulgation of the Special Recruitment Rules, candidates holding M. Phil qualification stand exempted from the requirement of passing the NET, irrespective of whether the M. Phil qualification was acquired by such candidates on or before December 1993. The decision in my opinion, ought to be understood to convey that the stipulation contained in the instructions issued by the Government cannot abrogate a statutory provision like Rule 3 (ii) of the Special Recruitment Rules provided the vacancies against which Recruitment is proposed are those to which the said Rules apply. If the vacancies sought to be filled up are covered by the provisions of the Special Recruitment Rules all such candidates as have a M. Phil qualification shall be exempt from appearing in the NET. In case however, the vacancies do not fall within the purview of the Special Recruitment Rules in as much as they are relatable to a period after the promulgation of the said Rules, the exemption envisaged by Rule

3 (2) cannot be availed of by the candidates, no matter they possess a Ph.D. or M. Phil Degree. There is no gain said that the decision of this Court can be a binding precedent only in so far as the same falls in conformity with the provisions of the Rules, for it is fairly well settled that a decision which is rendered in ignorance of a binding precedent or a mandatory provision of law, would not have anybinding effect on the doctrine of per-incuriam. If the decision of this Court in Raju's case supra is understood to suggest that the Special Recruitment Rules would applyto all vacancies arising even after the promulgation of the Rules, the same would in my opinion, run counter to the provisions of the Rules 1 (3) of the Rules mentioned above, and would therefore be per incuriam, thereby depriving it of the binding effect which it would otherwise be entitled to.

Mr. Vasant kumar next argued that the instructions in as much as they fixed the 31st of

December, 1993 as the cut off date for grant of exemption to M. Phil Degree holders was arbitrary. He urged that the classification of candidates depending upon whether they had acquired their M. Phil qualification before or after the said date is artificial and that there was no nexus between the classification made and the object sought to be achieved by the same. He urged that even if the instructions did not come in conflict with the statutory Rules, for the reasons stated earlier, yet the cut off date fixed could be declared to be arbitrary entitling all those who had acquired the M. Phil qualification after the said date to the benefit of exemption. A similar contention was urged before the Apex Court in University Grants Commission Vs. Sadhana Choudhary and others (1996 (7) Scale page 211). Repelling the argument, their Lordships held that unless the cut off date fixed is shown to be capricious or whimsical,

the same cannot be dubbed as arbitrary even when no particular reasons were forth coming for the choice made by Legislature or its delegate. Upholding the cut off date fixed for grant of exemption from appearing the NET, the Court observed thus -

> "We find considerable force in the aforesaid submissions of Sri. Banerjee. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature of its delegate must be accepted unless it can be said that it is verywide of the reasonable mark. (See. Union of India and another Vs. M/s. Parameshwaran Match Works Ltd., 1975 (2) SCR 573, at pg. 579 and Dr. (Mrs) Sushma Sharma etc., Vs. State of Rajasthan and others 1985 (3) SCR 243, at pg. 269).

> In the present case, the date - December 31, 1993 as fixed by notification dated June 21, 1995 in the matter of grant of exemption from the eligibility test for appointment of the post of lecturer has a reasonable basis keeping in view the time taken in submitting the Ph.D. thesis or obtaining M. Phil degree by candidates who had undertaken the study for Ph.D. or M. Phil degree prior to the issuance of the 1991 Regulations and the date, December 31 1993, cannot be held to be capricious or whimsical or wide of the reasonable mark."

Respectfully following the above decision, I have no difficulty in repelling the submission made by Mr. Vasant kumar that the cut off date fixed for grant of exemption was arbitrary or whimsical.

5. It was lastly urged by Mr.Vasant kumar that all such vacancies as were available in the cadre of lecturers in the Department of Collegiate Education

on the 23rd of June, 1993 when the Special Recruitment Rules were promulgated had not been filled up. He submitted that so long as those vacancies continued to exist, the benefit of a blanket exemption from appearance in the NET could also continue in the light of the provisions of Rule 3 (ii) of the said Rules. The writ petition does not however raise any such plea. There is no averment in the petition to the effect that the vacancies available as on the date of the promulgation of the Special Recruitment Rules continued to exist. As a matter of fact, no vacancies have in recent times been notified nor has the petitioner placed on record any advertisement notice inviting applications for any such vacancies. The argument advanced at the Bar does not thus have any factual foundation in the pleadings. It is therefore difficult to proceed on the assumption that the vacancies available on the date of promulgation of the Special Recruitment Rules continue to exist

against which the petitioner could apply and claim exemption from qualifying in the NET. Mr. Vasant kumar made a valient attempt to persuade me to hold an enquiry at this stage for the purpose of verifying whether any such vacancies really exist. I am not however inclined to do so, not only because the petitioner has not set up any such case in the writ petition but also because no advertisement notice inviting applications has been issued so far. It would therefore be an exercise in futility to embark upon any such roving enquiry for the purposes of identifying the number of vacancies and the date on which the same arose. Interest of justice in my opinion, would be sufficiently served if I reserve liberty to the petitioner to raise the contentions urged by Mr. Vasant kumar at the appropriate stage after an advertisement is issued in respect of the available vacancies. It shall be open in any such event for the petitioner to contend that the vacancies advertised was one to which the Special Recruit-

ment Rules applied as the same were vacancies that existed on the date of promulgation of the said Rules.

In the result, this writ petition fails and is accordingly dismissed but in the circumstances without any order as to costs.

Sd/-
JUDGE

The Seal of the High Court of Karnataka Bangalore

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